

IN The United States District Court  
For The Southern District of Georgia  
Savannah Division

Leonardo L. McMiller  
petitioner

Case

No. CR 412-017

VS.

United States of America  
Respondent

CLERK  
SO. DIST. OF  
GA

2020 AUG -4 AM 10:45

U.S. DIST. CLERK  
SAM SAWYER

Reply To The Government's Response  
In Opposition To Fed. R. Civi. P. 60(b)

McMiller asserts that the district Court Should not deny his motion For the three independent Reasons that are Set Forth by the Government in (its) Opposition.

First, McMiller argues that the Court Should resentence without the erroneous enhancements, where the Court Committed a procedural error as a Matter of Law pursuant to the 599 Amendment, by applying a Four-level enhancement under 2k2.1(b)(5), Whereas he had already entered a plea of guilty to Count-5 OF the Indictment For Carrying a FireArm during/in relation to a drug trafficking OFFense Under the 599...

Amendment it Clearly States:

IF the explosive or weapon that was possessed, brandished, used or discharged in the course of the underlying offense also results in conviction that would subject the defendant to an enhancement under 2k1.3(b)(3) (pertaining to possession of explosive material in connection with another Felony offense) or 2k2.1(b)(5) (pertaining to possession of any FireArm or ammunition in connection with another Felony offense), do not apply that enhancement.

Now, as for the two-level enhancement under 2k2.1(b)(4)(A), there is no evidence in the record to support that enhancement for a "Stolen FireArm"; there's no Complaint, Serial number in the report to support a Stolen FireArm theory; so therefore an error was committed, by applying the two level enhancement for a Stolen FireArm.

Government further states: but Civil Rule 60 "does not provide for relief from judgment in a criminal case. McMillar cites: Supreme Court ruling Buck v Davis 137 S. Ct. 759 197 L. Ed. 2d. 1 (2017) (In Buck it makes clear: that a Fed. R. Civ. P. 60(b), providing that a court may lift a judgment for any reason that justifies relief. McMillar also cites: longstanding Supreme Court ruling, Martinez v Ryan 132 S. Ct. 1309 182 L. Ed. 2d. 272 (2012) (what must be

Shown are "extraordinary Circumstances", where without such relief, an extreme and unexpected hardship would occur. Martinez and Buck are both Criminal Cases.

McMillar asserts pursuant to the extraordinary Circumstance requirement, he argues that it would be extraordinary for the Court to deprive him of his Life, Liberty to be Free, where the Law has made it clear pursuant to the Circumstances under the 598 amendment that pursuant to 2k2.1(b)(5) (pertaining to possession of any FireArm or ammunition in connection with another Felony Offense), do not apply that enhancement.

McMillar argues that it would a Manifest of injustice not to Vacate his Sentence and remand for resentencing without the two-level enhancement for a Stolen FireArm and the Four-level enhancement for Trafficking FireArms.

In Closing .... McMillar asserts that the government has acknowledge in their response that: IF the prisoner files a Subsequent motion asserting some error in that ruling, it is a legitimate Civil rule 60(b) motion.

McMillar asserts that he has pointed out two legitimate errors in the ruling, in his Case, where the Court erred as a matter of Law, by enhancing his base offense level, by two-levels for Stolen FireArm, where there is no evidence stated

in the record that Supports the existence of a Stolen FireArm and his base offense level was enhanced, by another additional Four-levels For Trafficking Firearms, where the retroactive applicable 599 Amendment prohibits enhancing the Sentence For 2k2.1 (b)(5).

McMillar respectfully requests that relief be granted upon Facts and Conclusion of Laws that he has made a legitimate Showing of two errors in the ruling, of his Case, which enhanced his Sentence and cause him to be deprived of his Life and Liberty to be Free under Fifth, and Eighth Amendment under the Constitution.

#### Conclusion

With Respect McMillar asks that this Honorable Vacate and Remand For Resentencing without the two erroneous enhancements pursuant to 2k2.1 (b)(4)(A) and 2k2.1 (b)(5).

Certificate of Service

I Leonardo L. McMillar hereby Certify that I have placed the Forgoing motion in the United States postal Service here at F.C.I. Jesup For mailing purposes to the address stated below:

Date July / 30 / 2020

United States Attorney  
Southern District of Georgia  
p. o. Box 8970  
Savannah GA, 31412

Respectfully Submitted  
Leonardo L. McMillar

Reg no. 17318-021  
Federal Correctional Institution  
2680 Hwy 301 South  
Jesup GA, 31599

Is/ Leonardo L. McMillar

Leonardo L. McMillor-17318-021  
Case 4:12-cr-00017-WTM-CLR Document 103 Filed 08/04/20 Page 6 of 6  
Federal Correctional Institution  
2680 Hwy 301 South  
Jesup GA, 31599



31401-376277



Legal mail